



Bureau of Competition
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 13, 1984

Werner Strupp, Esq.
Sinrod and Tash
2201 Wisconsin Avenue, N.W.
Washington, D.C. 20007

Dear Mr. Strupp:

Thank you for your letter dated February 9, 1984, in which you ask, on behalf of the American Podiatry Association ("APA"), whether APA peer review committees may refer to a publicly-available national medicare profile of fees, published by the Health Care Financing Administration ("HCFA"), as an aid in determining whether a disputed fee is "reasonable." You state that peer review committees do not intend for HCFA's fee profiles to become the exclusive measuring device of a fee's "reasonableness", that the profile of fees will not be distributed to APA component society members, and that third-party payers and other intermediaries will be aware that peer review committees have the fee profile available to them.

It is my opinion that use of HCFA's medicare fee profile by component society peer review committees as a reference aid in determining whether a disputed fee is "reasonable," in accordance with APA Guidelines, would not appear to violate the antitrust laws, provided the committees do not use the fee profile to restrain price competition or to discourage the use of innovative or efficiency-enhancing procedures by podiatrists. If peer review committees were to use the fee profile to facilitate an agreement among podiatrists to price their services in accordance with the published rates, however, their conduct might constitute unlawful price-fixing.

I hope that this information is helpful.

Sincerely,

A handwritten signature in cursive script that reads "Arthur N. Lerner".

Arthur N. Lerner
Assistant Director

*received 2/11/84
Assistant Director*

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OF COUNSEL

February 9, 1984

Arthur Lerner, Esquire
Federal Trade Commission
Bureau of Competition
Washington, D.C. 20580

Dear Mr. Lerner:

The undersigned is general counsel of the American Podiatry Association (APA), located at 20 Chevy Chase Circle, N.W., Washington, D.C.

As you are aware, the Commission's Bureau of Competition, on August 18, 1983, issued an advisory opinion letter to APA and one of its component state association's the Podiatry Society of Virginia. The opinion related to the resumption of peer review by APA and its components in matters concerning podiatrist's fees, determinations of medical necessity and quality of care.

Since receipt of the opinion, a question has arisen regarding the process by which peer review committees resolve disputes concerning "usual", "customary", or "reasonable" fees. In accordance with the APA guidelines, the conclusions reached by peer review committees are based on their own professional experiences. Such conclusions are usually expressed in positive or negative terms, i.e. that a particular fee does, or does not, fall within the range of usual, customary and reasonable fees for the service performed. The question that has been posed is whether in arriving at its determination, a committee may refer to the national medicare profile of fees, published by the Health Care Financing Administration, U.S. Department of Health and Human Services.

As the term indicates, the national profile is a compendium of fees charged to medicare beneficiaries for particular procedures. The committees, if they were to use these data, would employ them as an aid in reaching the required conclusion. The profile would not become an exclusive measuring device, nor would it be publicized or distributed to the association membership. However, third party insurance carriers, or other intermediaries would generally be aware that peer review committees have the aforementioned information available to them. In all other respects, the program would function in the manner previously described.

Arthur Lerner, Esquire
February 9, 1984
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It would be greatly appreciated, if you could provide us with your opinion regarding the foregoing proposed procedure.

Very truly yours,


Werner Strupp

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cc: Dr. Norman Klombers